UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

TODD R.G. HILL,

Plaintiff,

v.

THE BOARD OF DIRECTORS, OFFICERS, AND AGENTS AND INDIVIDUALS OF PEOPLES COLLEGE OF LAW, et al.,

Defendants.

No. 2:23-cv-01298-CV-BFM

INTERIM REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Interim Report and Recommendation is submitted to the Honorable Cynthia Valenzuela, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

SUMMARY OF RECOMMENDATION

This is a civil rights case filed by a pro se litigant. Plaintiff Todd R.G. Hill alleges eight causes of action against individuals and entities associated with People's College of Law and the State Bar of California. The previously assigned

District Judge dismissed his complaint three times for violating Rule 8's requirement of a short and plain statement of a claim on which relief can be granted. While the Third Amended Complaint makes significant improvements in that regard, it ultimately fails to state a federal cause of action against any Defendant.

Three causes of actions allege racial or gender discrimination in violation of the U.S. Constitution and federal law, but the Third Amended Complaint is devoid of nonconclusory allegations that any Defendant acted with discriminatory intent. Nor are there plausible allegations of a racially disparate impact; Plaintiff's theory is that the State Bar and People's College of Law's administrative policies disproportionately affected African American students at the school. But the policies and practices emphasized by Plaintiff apply universally to all students, and Plaintiff presents only conclusory allegations that those policies had a disparate impact on African American students. Further, he makes no cogent allegation concerning sex discrimination. The Third Amended Complaint, therefore, fails to plead any cause of action based on discrimination.

Plaintiff's only other federal claim—a civil RICO claim premised on fraud—likewise fails to allege the essential elements of that cause of action. Specifically, Plaintiff does not plausibly allege that any Defendants worked collectively or in agreement with each other, nor does it allege facts that would meet the heightened standard for pleading fraud claims.

Plaintiff's state-law claims against the State Bar and its employees are each fatally flawed. As discussed in more detail below, limitations on suits against government entities and employees doom two of those claims, and the third fails because it is not tied to a viable legal theory.

While these Motions were pending, Plaintiff proposed another amended complaint, his fifth attempt to state a claim. That amendment, too, fails to fix the root problems in his case. The Court therefore recommends that that request to amend be denied.

Plaintiff has had five chances to state his claims, and, as to the majority of his claims, the Court is unconvinced that Plaintiff will be able to plead additional factual allegations that would give rise to a federal cause of action. With narrow exceptions—certain claims alleged against Defendants associated with the People's College of Law, which are differentiated for the reasons discussed below—Plaintiff's claims should be dismissed without leave to amend. Further, because all the claims against the State Bar should be dismissed without leave to amend, the Court recommends that all Defendants associated with the State Bar be dismissed from the case with prejudice.

RELEVANT PROCEDURAL HISTORY

Plaintiff filed his initial Complaint on February 20, 2023. (ECF 1.) The previously assigned District Judge *sua sponte* dismissed the original Complaint with leave to amend, finding that it violated Rule 8 of the Federal Rules of Civil Procedure. (ECF 37.) Plaintiff's First Amended Complaint likewise was dismissed *sua sponte* for violating Rule 8. (ECF 38, 45 (describing the 75-page First Amended Complaint as "prolix, rambling, and excessively long").) Following a Report and Recommendation by this Court, the Second Amended Complaint was dismissed with leave to amend, in part for violating Rule 8. (ECF 145 at 2.) The District Judge also dismissed with prejudice some of Plaintiff's claims for deficiencies that could not be cured by amendment. (*See* ECF 145 at 2-3.) Plaintiff filed the operative Third Amended Complaint ("TAC") on August 21, 2024. (ECF 148.)

Before the Court are four motions to dismiss the TAC. (ECF 154, 165, 172, 186.) Defendant Robert Spiro moves to dismiss, arguing that the TAC violates Rule 8. (ECF 154.) Two groups of Defendants associated with People's College of Law move to dismiss the TAC for violating Rule 8 and for failing to state a claim. (ECF 165, 186.[1]) Finally, individual Defendants associated with the State Bar of California ("State Bar Defendants") move to dismiss the TAC on the following grounds: (1) the TAC fails to comply with Rule 8; (2) the State Bar Defendants sued in their official capacities have sovereign immunity; (3) the State Bar Defendants sued in their individual capacities are entitled to qualified immunity; and (4) the TAC fails to state a claim against any State Bar Defendant. (ECF 172.) All moving Defendants ask that the TAC be dismissed with prejudice and without further leave to amend. (ECF 154 at 21-22; ECF 165 at 14-15; ECF 186 at 14-15; ECF 17 at 34.)

Also pending before the Court is Plaintiff's Motion for leave to amend the TAC (ECF 163.) Plaintiff seeks to amend the TAC to add the State Bar of California and the Board of Directors of Peoples College of Law as additional defendants, and to add additional factual contentions. (ECF 163 at 2.) All the moving Defendants opposed Plaintiff's Motion to amend. (ECF 177, 178, 179.)

[1] All but one Defendant associated with People's College of Law, Defendant Spiro, are represented by one law firm. Because of a discrepancy in the dates of service, that firm filed two separate Motions to dismiss (ECF 165, 186), but the two motions are materially identical, and the Court does not distinguish between the two. Defendant Spiro is associated with People's College of Law but represents himself and filed a separate Motion. As to the substance of the claims, there is little reason to distinguish between Spiro and the other Defendants associated with People's College of Law—though there are minor differences in the documents for which the parties sought judicial notice, differences in the meet and confer sessions, etc. Unless context suggests otherwise, "PCL Defendants" refers to all Defendants associated with PCL who moved to dismiss in any of the three pending Motions at Docket 154, 165, and 186.

Three Requests for judicial notice have been filed by the parties. (ECF 173, 192, 197.) Plaintiff filed a Motion to supplement the record with three email exchanges (ECF 199) and filed a separate Motion asking the Court to grant his previously filed requests (ECF 210).

All these pending Motions and Requests are fully briefed and ready for decision.[2]

FACTUAL BACKGROUND

A. Summary of Plaintiff's Allegations

Without attempting to exhaustively state the facts set out in the TAC and accompanying exhibits, the gist of Plaintiff's allegations, taken as true for purposes of the pending Motions, follows:

In Fall 2019, Plaintiff enrolled at People's College of Law ("PCL"), an unaccredited law school in Los Angeles. (TAC ¶ 40.) He was one of five African American students in his 1L class. (TAC ¶¶ 42, 89.) Plaintiff maintained good academic standing at PCL, was elected to serve on PCL's Community Board as Secretary, and was one of only two PCL students who passed the First-Year Law Students' Examination in June 2020. (TAC ¶ 43-45, 91-93.)

After passing the exam, Plaintiff began experiencing problems at PCL. First, Plaintiff's transcripts were inaccurate. Despite informing "Defendants" (not further specified) of the inaccuracies, his efforts to obtain an accurate transcript were obstructed by Defendants Gonzalez, Pena, Spiro, and Leonard.

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[2] Plaintiff's Request for judicial notice has not been opposed by any of the Defendants. The Court, however, has read Plaintiff's Request and does not anticipate that an Opposition would shed new light on the analysis. The same is true of Plaintiff's recently filed Motion that requests an order granting his prior Motions (ECF 210). As such, the Court determines that further briefing is necessary to its recommendation relating to Docket Nos. 197 and 210.

(TAC ¶¶ 46-47, 94.) In July 2022, Defendant Spiro, on behalf of PCL, also informed Plaintiff that PCL would not be able to provide him the required fourth-year courses necessary for him to graduate. (TAC ¶ 48, 95.)

Plaintiff alleges that PCL made public misrepresentations, failed to provide mandatory disclosures to him throughout his time at PCL. (TAC ¶ 111, 118, 248.) Plaintiff alleges that these administrative failures were common at PCL and disproportionately effected African American students. (TAC ¶¶ 107-08.) PCL Defendants also published a defamatory letter about him to the PCL community in retaliation to his complaints.

Many of PCL's practices were noncompliant with the California State Bar's educational standards. (TAC ¶ 113.) For example, PCL misrepresented its passage rates for the FYLSX (or "baby bar") and the California Bar Exam. (TAC ¶ 117.) Its noncompliance was so severe that the State Bar revoked PCL's registration and terminated its degree-granting authority in May 2024. (TAC ¶ 114.)

Plaintiff alleges that the State Bar of California was complicit in PCL's actions. Specifically, State Bar Defendants Ayrapetyan, Ching, Davtyan, Duran, Leonard, Stallings, and Wilson allegedly knew or should have known of PCL's noncompliance with the State Bar's guidelines and the disparate education outcomes at PCL but failed to take any remedial action. (TAC ¶¶ 51, 53, 58-59, 60-61, 100.) The State Bar Defendant's failure to take remedial action was allegedly driven by the State Bar's non-interference policy, under which the State Bar declines to intervene in disputes between students and their law schools. (TAC ¶¶ 79-80.) Their failure to act caused significant delays in Plaintiff's legal education and is emblematic of the disparate impact the policy has on African American students (TAC ¶¶ 62, 73-76, 100, 102, 109.)

In December 2022, Plaintiff claims he submitted a grievance to the State Bar but did not receive a response. (TAC ¶ 85.) Plaintiff submitted a Government Claims Act Form by email in August 2024. (TAC ¶ 86.)

B. The TAC's Causes of Action

Plaintiff alleges eight causes of action. The First Cause of Action alleges a violation of the Fourteenth Amendment's Equal Protection Clause by certain State Bar Defendants in their individual capacities. Plaintiff's allegation is that those State Bar Defendants, acting under color of state law, "implemented and enforced discriminatory policies and practices that disproportionately harmed African American students" at PCL. (TAC at 19.)

Next, Plaintiff asserts a violation of California's Unruh Civil Rights Act against PCL Defendants Gonzalez, Pena, Spiro, and Sarinana, and State Bar Defendants Leonard and Ching. Plaintiff claims that these Defendants denied him equal access to educational opportunities and were motivated by his race, gender, sexual orientation, or disability. (TAC at 24-25.)

Plaintiff's Third Cause of Action arises under Title VI of the Civil Rights Act of 1964 and is asserted against PCL Defendants Sarinana, Bouffard, Pena, Spiro, Gonzalez, Torres, and Sanchez, and State Bar Defendants Leonard, Wilson, Stallings, Duran, and Chen. It alleges that those Defendants engaged in practices that disproportionately impacted African American students, including manipulation of academic records and delay in awarding degrees. (TAC at 28.)

The Fourth and Fifth Causes of Action, violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act and conspiracy respectively, name the same Defendants as the Third Cause of Action. (TAC at 30, 33.) The RICO claim is premised on an allegation that the PCL Defendants and the State

Bar Defendants were an enterprise for RICO purposes, and colluded to commit wire fraud, mail fraud, and acts of discrimination.

The Sixth Cause of Action asserts a claim of negligence and negligence per se against all Defendants. (TAC at 36-37.) Plaintiff's Seventh Cause of Action for negligent hiring, retention, and supervision is asserted against PCL's Board of Directors, officers, and agents, and against Defendants Spiro, Pena, Gillens, Stallings, Wilson, Ching, Davytyan, Kramer, Chen, Silberger, Zuniga, Aramayo, Ayrapetyan, and Nunez. (TAC at 43.)

Finally, Plaintiff alleges a sex discrimination retaliation claim under Title IX against the Board of Directors, officers, and agents of PCL and Defendants Spiro, Pena, Gillens, DeuPree, Franco, Stallings, Wilson, Ching, Davytyan, Kramer, Chen, Silberger, Zuniga, Aramayo, Ayrapetyan, and Nunez. (TAC at 46.)

ANALYSIS

A. Standards for Dismissal Under Rule 12(b)(6) and Rule 8 of the Federal Rules of Civil Procedure

A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal under Rule 12(b)(6) may be based on "either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable theory.'" *Johnson v. Riverside Healthcare Sys., LP,* 534 F.3d 1116, 1121 (9th Cir. 2008) (citation omitted). To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotations omitted). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference

that the defendant is liable for the misconduct alleged." *Id.* (observing that Rule 8 does not require "detailed factual allegations" but requires more than "labels and conclusions").

When assessing the legal sufficiency of a plaintiff's claims, a court must accept as true all non-conclusory factual allegations contained in the complaint and must construe the complaint in the light most favorable to the plaintiff. *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 989 (9th Cir. 2009). A court must construe a pro se litigant's pleading liberally and hold a pro se plaintiff's pleading to a less stringent standard than that applied to pleadings drafted by lawyers. *Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (citation omitted).

Generally, a court may not consider material outside the complaint in deciding a Rule 12(b)(6) motion. *Intri-Plex Techs., Inc. v. Crest Grp., Inc.,* 499 F.3d 1048, 1052 (9th Cir. 2007) (citation omitted). A court may consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation omitted); *Schneider v. Cal. Dep't of Corrs.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1988) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court may *not* look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss.") (citations omitted).

The moving Defendants all moved for dismissal under the above standard, and also based on Plaintiff's failure to comply with Rule 8 of the Federal Rules of Civil Procedure. Rule 8 requires "a short and plain statement showing that the pleader is entitled to relief" where each allegation is "simple, concise, and direct." *See* Fed. R. Civ. P. 8(a), (d)(1). Rule 8 provides a ground for dismissal independent of Rule 12(b)(6), and dismissal on Rule 8 grounds does not require a finding that a complaint is wholly without merit. *See McHenry v. Renne,* 84

F.3d 1172, 1179 (9th Cir. 1996). Such dismissal is typically reserved for those "instances in which the complaint is so 'verbose, confused and redundant that its true substance, if any, is well disguised.'" *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008) (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969)); *see also McHenry*, 84 F.3d at 1178-79 (court may dismiss a pro se litigant's complaint for noncompliance with Rule 8); *see generally Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) ("Although we construe pleadings liberally in their favor, pro se litigants are bound by the rules of procedure.").

B. Requests for Judicial Notice

Before discussing the pending Motions to Dismiss, the Court reviews the parties' Requests for judicial notice. The State Bar Defendants ask the Court to take judicial notice of (1) Plaintiff's August 13, 2024, Government Claims Act form; and (2) the State Bar's September 3, 2024, response to Plaintiff's August 13, 2024, form. (ECF 173 at 3.) Defendant Spiro requests that the Court takes judicial notice of: (1) specific paragraphs from his Motion to Dismiss; (2) specific paragraphs in Plaintiff's original Complaint; (3) this Court's scheduling order (ECF 167); (4) an automated email from the CM/ECF system; and (5) an email from the California Bar confirming submission of a plan for Plaintiff's fourth year of study at PCL. (ECF 192.) Finally, Plaintiff requests judicial notice of Defendants' alleged misconduct, including email exchanges between him and Defendant Spiro and email exchanges with counsel for the remaining PCL Defendants' counsel. (ECF 197.) Plaintiff opposes both Defendants' Requests (ECF 180, 195), and Plaintiff's request is unopposed.

The Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is "generally known within the trial court's territorial

jurisdiction" or (2) can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

As an initial matter, "[c]ourts do not take judicial notice of documents, they take judicial notice of facts. The existence of a document could be such a fact, but only if the other requirements of Rule 201 are met." *Cruz v. Specialized Loan Servicing, LLC*, No. SACV 22-01610-CJC (JDEx), 2022 WL 18228277, at *2 (C.D. Cal. Oct. 14, 2022) (citation and internal brackets omitted). Documents in the public record may be judicially noticed to show, for example, that a judicial proceeding occurred or that a document was filed in another case. *Lee v. City of L.A.*, 250 F.3d 668, 689-90 (9th Cir. 2001). That does not mean, however, that a court may take judicial notice of findings of fact from another case. *Id.*

The State Bar Defendants' Request (ECF 173) should be **granted**. Both documents are public records, and the authenticity of those records cannot reasonably be questioned. *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999). As such, the Court may take judicial notice of the documents to the extent that they establish Plaintiff filed a Government Claims Form and that the State Bar of California rejected his claims, and the date on which those events occurred.

Defendant Spiro's Request (ECF 192) should be **granted in part and denied in part**. He asks the Court to take notice of an automatically generated email from the CM/ECF system, offered to demonstrate that he received notice that the TAC was filed on August 26, 2024. (ECF 182 at 4; ECF 192 at 2.) The accuracy of the email to establish the date of receipt cannot be reasonably questioned, and the Court therefore may take notice of the date when Defendant Spiro received it. Likewise, Exhibit B, an email correspondence sent from the State Bar approving Defendant Spiro's study plan for Plaintiff's fourth year at PCL, is a proper subject of judicial notice because it is a public record. *Lee v.*

City of L.A., 250 F.3d 668, 689-90 (9th Cir. 2001). The Court therefore recommends taking notice of the existence of a study plan. As for the remaining three requests, the Court need not take judicial notice of documents, or their contents, filed in its own case. *See Larios v. Lunardi*, 442 F. Supp. 3d 1299, 1304 (E.D. Cal. 2020). Accordingly, the Court recommends denying the remaining three Requests as unnecessary.

Plaintiff's Request (ECF 197) should be **granted in part**. Plaintiff asks the Court to take notice of opposing counsel's misconduct, but also of email exchanges between him and opposing counsel to permit evaluation of opposing counsel's compliance with this Court's meet-and-confer requirements in relation to these Motions. (ECF 197 at 4.) Without taking judicial notice of the correctness of the assertions made by each party during their meetings, the Court can take notice that the conversations included in those emails occurred, and the dates on which those communications occurred. The Court thus recommends Plaintiff's request for judicial notice be granted in part.

Relatedly, Plaintiff moves to supplement the record with additional documents. (ECF 199.) Those documents are not incorporated into the TAC, and thus the Court will not consider them for purposes of deciding whether the TAC adequately states a claim under Rule 12(b)(6). That said, to the extent that those documents might bear on Plaintiff's ability to amend his pleadings to state a claim, the Court has considered the additional documents attached to Plaintiff's Motion. The Motion (ECF 199) should be **granted in part** along those lines.

Plaintiff filed another Motion asking the Court to "grant[ ] his previously filed Request for Judicial Notice and [for] Supplemental of the Record." (ECF 210.) That request should be **denied as moot**, based on the above rulings.

C. Any Deficiency in the Meet and Confer Process Does Not Warrant Striking the Motions

Before addressing the merits of the Motions to Dismiss, Plaintiff argues that the PCL Defendants failed to comply with Local Rule 7-3, and that the Court should strike their Motions on that basis. (ECF 175 at 10, ECF 193 at 10.) Local Rule 7-3 requires a party contemplating filing a motion to meet and confer with opposing counsel not less than seven days before filing a motion to discuss the substance of the motion. L.R. 7-3. The Rule is designed to provide the parties with an opportunity "to reach a resolution that eliminates the necessity for a hearing." L.R. 7-3. From review of the filings, the Court believes the purpose of the Rule was fulfilled, even if compliance was not perfect.

Defendant Spiro's Notice of Motion reflects that the parties met and conferred on August 30, 2024, just five days before the Motion to Dismiss was filed. (ECF 154 at 2.) Defendant Spiro's Motion largely rests on the same arguments as those raised in his Motion to Dismiss the Second Amended Complaint. (*See generally* ECF 58, 154.) The Court does not believe that an earlier or more thorough conference would have avoided motion practice between Plaintiff and Spiro.

Similarly, while the remaining PCL Defendants' first Motion did not strictly comply with Rule 7-3, the record reflects counsel's good faith effort to comply with the purpose of the rule. (See ECF 165 2-3 (describing counsel's attempts to meet and confer, including emailing Plaintiff a detailed outline prior to the meeting).) And the PCL Defendants' second motion was filed on behalf of newly served Defendants and raises identical points as its first Motion, negating any potential prejudice Plaintiff may have suffered from lack of full compliance with the Rule.

At bottom, all Defendants' Motions complied with the spirit of the rule: Plaintiff knew what to expect with Defendants' Motions and had an opportunity to persuade them not to file. The Motions to Dismiss should not be struck for lack of perfect compliance with Local Rule 7-3.

D. The TAC Fails to State a Federal Claim Against Any Defendant

Defendants contend that the TAC should be dismissed for violating Rule 8 and for failing to state a claim. (*See generally* ECF 154, 165, 172, 186.) Plaintiff disagrees, arguing that the TAC complies with Rule 8 and is sufficiently plead.

While the TAC remains difficult to understand at times, it is a significant improvement from the previous complaint. The conduct being complained of is more clearly stated and Plaintiff has more clearly attributed conduct to specific Defendants. While there is a lack of specificity at times, the Court concludes that the TAC should not be struck for noncompliance with Rule 8. The Court therefore recommends denying Defendants' Motions on that ground.

Though the TAC is clearer, it suffers from a different defect: it fails to state a federal cause of action against any Defendant. None of the federal causes of action are supported by plausible factual allegations giving rise an inference of liability.

1. Fourteenth Amendment Equal Protection

Plaintiff's First Cause of Action names the State Bar Defendants in their individual capacities and alleges violations of Plaintiff's equal protection rights. Alleged violations of constitutional rights may be brought under 42 U.S.C. § 1983. To state a claim for relief under § 1983, a complaint must allege: "(1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). And to state an equal protection claim under § 1983, a plaintiff must show that "defendants

acted with an intent or purpose to discriminate against him based upon membership in a protected class." *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013).

Here, the TAC fails to plausibly allege an equal protection violation. Plaintiff alleges that the State Bar Defendants named in the First Cause of Action "caused him harm due to the inaction in addressing the discriminatory practices at PCL." (TAC ¶ 135.) In general, citizens enjoy "no constitutional right to sue state employees who fail to protect them against harm inflicted by third parties." *L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir. 1992). For this reason, the State Bar's knowledge of the existence of racial disparities in an area it regulates does not give rise to an equal protection claim.

Plaintiff alleges more, however: he alleges that the State Bar's own non-interference policy had a disparate impact on African American students. (*See* TAC ¶ 134-142.) That claim is equally unavailing. The State Bar's non-interference policy facially applies equally to all students. (*See* TAC ¶ 121 ("Neither the Committee nor any office of the State Bar of California will intervene in disputes between students and their law schools.") (quoting Guideline 1.6 of the Unaccredited Law School Rules and Guidelines).) Moreover, Plaintiff provides only conclusory allegations that the State Bar's non-interference policy itself has a disparate impact on African American students. Plaintiff points to statistical data establishing a low pass-rate for African American students taking the First Year Law Student Exam. (TAC at 124.) But there are no allegations correlating the State Bar's non-interference policy with the low pass-rate. Finally, even if there is a connection between the two, Plaintiff has not adequately alleged that the State Bar set its policy with the *intention* of discriminating against African American students. That is, "discriminatory purpose . . . implies more than intent as volition or intent as

awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Navarro v. Block*, 72 F.3d 712, 716 n.5 (9th Cir. 1995) (cleaned up).[3] As such, the TAC fails to plausibly allege a constitutional violation occurred.

In opposition to Defendants' Motion, Plaintiff argues that the State Bar Defendants' failure to investigate his complaint against PCL demonstrated a deliberate indifference to his needs. (ECF 176 at 16-18.) The Court disagrees, for the reasons stated above and for one other: an equal protection violation requires intent. Deliberate indifference is a lower standard that applies, for example, to certain Eighth Amendment claims. *See Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1067-68 (9th Cir. 2016) (discussing the deliberate indifference standard applied to prisoner civil rights complaints). It is not adequate, however, to state an equal protection claim. *See Lee v. City of L.A.*, 250 F.3d 668, 687 (9th Cir. 2001) (allegation that Defendant's facially neutral policy was deliberately indifferent to the rights of a certain population did not state an equal protection claim, because such a claim requires intent). As such, even if the State Bar Defendants were deliberately indifferent to Plaintiff's needs, it would not give rise to a constitutional injury.

For these reasons, the First Cause of Action fails to state an equal protection violation and should be dismissed. Moreover, because the premise of Plaintiff's claim is not legally viable, the Court recommends that this claim be **dismissed without further leave to amend**.

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[3] Plaintiff appears to recognize these deficiencies—he admits as much in his affidavit accompanying the TAC. (*See* TAC at 57 ("I firmly believe, although I understand it may not necessarily prove, that the State Bar's inaction and PCL's misconduct were motivated, at least in part, by discriminatory animus.").)

2. Title VI of the Civil Rights Act of 1964

Plaintiff's Third Cause of Action alleges a Title VI violation against PCL Defendants Sarinana, Bouffard, Pena, Spiro, Gonzalez, Torres, and Sanchez and State Bar Defendants Leonard, Wilson, Stallings, Duran, and Chen. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Claims under Title VI must allege both that the defendant is an entity engaging in racial discrimination and that it is receiving federal funding. *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled in part on other grounds by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th Cir.2001).

The TAC fails to plausibly allege either required element. First, the Defendants named in this claim are individuals, and those Defendants who are government employees are sued in their individual capacities only. None of those individuals directly receive federal funds. The Ninth Circuit has not yet decided whether individuals may be liable under Title VI, given that they are not direct recipients of federal funds. But other circuits, and district courts in this Circuit, have held that they may not. *See Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1169 (11th Cir. 2003) (citing *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1356 (6th Cir. 1996) ("[I]ndividuals may not be held liable for violations of Title VI because it prohibits discrimination only by recipients of federal funding."); *Lee v. Bd. Of Trs. Of the Cal. State Univ., Fullerton*, No. 2:15-cv-01713-CAS (PLAx), 2015 WL 4272752, at *5 (C.D. Cal. July 14, 2015) (collecting cases). The Court agrees with that view; the Defendants named in this Cause of Action are not proper defendants under Title VI.

Moreover, even if individual Defendants could be sued under Title VI, the TAC fails to plausibly allege racial discrimination by any Defendant. A civil action under Title VI, like a claim the Equal Protection Clause, must be premised on intentional conduct. *See Alexander v. Choate*, 469 U.S. 287, 293 (1985). Plaintiff's discrimination claims against the State Bar Defendants are similar to those made in connection with the equal protection claim just discussed. (TAC ¶ 182.) And as with that claim, the TAC contains no plausible allegations that any State Bar Defendant intentionally discriminated against Plaintiff because of his race.

Likewise, the TAC fails to allege that the PCL Defendants' conduct was racially motivated. Plaintiff alleges that the PCL Defendants named in this Third Cause of Action intentionally discriminated against African Americans by manipulating academic records and delaying degree awards. (TAC ¶ 174, 179.) But Plaintiff's claim is supported only by conclusory allegations, which are insufficient. *See Iqbal*, 556 U.S. at 678 ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'") (internal citation omitted). Indeed, it appears from the face of the TAC and from its exhibits that these administrative failures were widespread at PCL and were not limited to students of a particular race—a conclusion reinforced by the State Bar's decision to revoke PCL's degree-awarding privilege. (*See* TAC 110-18.)

At bottom, the TAC fails to plausibly allege a Title VI violation against any Defendants and should be dismissed for failure to state a claim. And here again, the Court recommends that no further leave to amend this claim be granted: Plaintiff has filed four complaints and has lodged a proposed fifth complaint (ECF 178) and in none of these does he come close to stating a claim of intentional discrimination by any Defendants. *McGlinchy v. Shell Chem. Co.*,

845 F.2d 802, 809-10 (9th Cir. 1988) ("Repeated failure to cure deficiencies by amendments previously allowed is [a] valid reason for a district court to deny a party leave to amend."). The Court therefore recommends that Third Cause of Action be **dismissed with prejudice.**

3. Civil Claim under the Racketeer Influenced and Corrupt Organizations Act

Plaintiff also alleges a civil RICO claim against various PCL and State Bar Defendants. A civil cause of action under RICO must allege: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to plaintiff's 'business or property.'" *Living Designs, Inc. v. E.I. Dupont de Nemours and Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (internal citation omitted). An enterprise is "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(2). To prove an "association-in-fact" enterprise, there must be "evidence of an ongoing organization, formal or informal" and "evidence that the various associates function as a continuing unit." *Boyle v. United States*, 556 U.S. 938, 946 (2009).

Here, the TAC fails to plausibly allege an association-in-fact enterprise. Plaintiff alleges that "[t]he Defendants, including PCL and the State Bar's agents, engaged in a coordinated effort to defraud and exploit African American students, including Plaintiff." (TAC ¶ 188.) Apart from that conclusory statement, there is no allegation that the PCL Defendants and the State Bar employees were working on concert with each other toward one goal; at most Plaintiff claims that the State Bar was aware of and failed to act with respect to PCL's failings (TAC ¶¶ 193-94)—a far cry from the "common purpose" required to state a RICO claim. *Odom v. Microsoft Corp.*, 486 F.3d 541, 552 (9th

Cir. 2007) (en banc). For this reason, the TAC does not state a RICO claim against the State Bar Defendants.

The seven PCL Defendants named in the RICO claim are all, at least, executives and board members at PCL and thus presumably shared at least a high-level common purpose of keeping PCL afloat and continuing to recruit students, despite growing scrutiny of the school. But the TAC contains no (nonconclusory) factual allegations suggesting that they worked together in concert toward that goal. *Doan v. Singh*, 617 F. App'x. 684, 686 (9th Cir. 2015) (finding that plaintiffs had failed to adequately allege a RICO enterprise with a common purpose when, based on the complaint, "it is not clear what exactly each individual did, when they did it, or how they functioned together as a continuing unit").

More problematic still, to the extent that Plaintiff's RICO claim depends on wire or mail fraud as the "racketeering activity," the circumstances of that fraud must be pleaded with particularity under Rule 9(b).[4] The pleader "must state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation." *Odom*, 486 F.3d at 553-56 (cleaned up). The allegations in the TAC fall far short of that mark. Indeed, Plaintiff does not allege any specific action taken by any individual PCL Defendant in furtherance of the purportedly fraudulent scheme. (TAC ¶¶ 193.)

The TAC, accordingly, fails to state a RICO claim against any Defendant and should be dismissed. With respect to the State Bar Defendants, Plaintiff's theory is not legally viable, in that awareness of a third party's fraudulent conduct can never amount to "participat[ion] in the operation or management of the enterprise," as is required to state a RICO claim. *Reves v. Ernst & Young*,

[4] Plaintiff also includes allegations relating to racial discrimination in his RICO claim, but he does not make clear—and the Court cannot see—how discrimination fits the definition of "racketeering activity." 18 U.S.C. § 1961(1).

507 U.S. 170, 185 (1993). The RICO claim against the State Bar Defendants should be **dismissed without leave to amend**.

With respect to the PCL Defendants, however, the Court recommends dismissal with leave to amend. First, neither Spiro nor the remaining PCL Defendants made any more than a passing reference to dismissal of Plaintiff's RICO claim on substantive grounds. (*See* ECF 154 at 8 (Spiro's motion, moving only on Rule 8 grounds as to the entire complaint); ECF 165 at 13 (PCL Defendant's motion, making only passing reference to RICO claim and its failure to allege any individual's actions that would support a finding of racketeering activity).) Second, the Court notes that the Second Amended Complaint did contain a handful of more specific allegations that could be relevant to Plaintiff's RICO claim. (*See*, *e.g.*, ECF 55 at 93-94.) This is not to say that the allegations in the prior pleading would have been adequate, if included here, to state a claim; rather, the Court merely suggests that Plaintiff may have trimmed more specific allegations in an attempt to ensure his pleading was not dismissed on Rule 8 grounds. Finally, in its prior Report and Recommendation, the Court addressed RICO only insofar as it related to Eleventh Amendment immunity issues. (ECF 132 at 20-21.) The Court thus concludes that Plaintiff should be given leave to amend this claim, as the facts do not suggest that leave to amend would necessarily be a futile act as to the PCL Defendants.

4. Title IX of the Education Amendments of 1972

The Eighth Cause of Action alleges a violation of Title IX against various State Bar and PCL Defendants for their alleged retaliation against Plaintiff for his complaints about PCL's discriminatory treatment. (TAC ¶ 248.) Title IX bars sex-based discrimination by educational institutions. *See* 20 U.S.C. § 1681(a) (detailing prohibitions). By its own terms, Title IX "reaches institutions and programs that receive federal funds . . . it has consistently been interpreted as

not authorizing suit against school officials, teachers, and other individuals." *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009) (citations omitted); *Al-Rifai v. Willows Unified Sch. Dist.*, 469 F. App'x 657, 649 (9th Cir. 2012 ("Title IX does not create a private right of action against school officials, teachers, and other individuals who are not direct recipients of federal funding.") (citation omitted).

The TAC names "The Board of Directors, Officers, and Agents of Peoples College of Law," individual PCL-related Defendants, and individual State Bar Defendants, sued in their individual capacities only. (TAC at 46; *see also* TAC ¶ 21 ("The following are current or former employees or affiliates of the State Bar of California ('State Bar') named as Defendants in their individual capacities").) None of these Defendants can be sued under Title IX because they do not directly receive federal funding.

But even if these Defendants were proper defendants under Title IX, Plaintiff's allegations are insufficient to state a claim. To state a Title IX retaliation claim, Plaintiff must allege: (1) he engaged in protected activity; (2) he suffered an adverse action by Defendants; and (3) there is a causal connection between the two. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 867 (9th Cir. 2014). Plaintiff does not allege that any State Bar Defendant engaged in retaliatory conduct. Plaintiff's theory is that the State Bar Defendants' inaction was an implicit endorsement of the PCL Defendants' sex-based discrimination (TAC ¶ 256), but such a theory is insufficient to establish their liability. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288 (1998) (recovery under Title IX not available solely "on principles of vicarious liability

or constructive notice."). Without any affirmative conduct, the State Bar Defendants are not liable under Title IX.[5]

As for the PCL Defendants, the TAC alleges that Defendant Gonzalez, with the implicit or explicit endorsement of other PCL Defendants, disseminated a defamatory letter to the PCL community in response to Plaintiff's complaints about discriminatory treatment. He alleges that the letter "falsely portrayed Plaintiff as a misogynist, leveraging harmful gender stereotypes to damages his reputation and standing within the academic community." (TAC ¶¶ 248, 253-55.) This misunderstands what is required to state a Title IX claim based on retaliation: a showing that a funding recipient "retaliate[d] against a person because he complains of sex discrimination." *Jackson v. Birmingham Bd. Of Educ.*, 544 U.S. 167, 173-74 (2005) (cleaned up); *Emeldi v. Univ. of Or.*, 698 F.3d 715, 725 (9th Cir. 2012) (protected activities include protesting or opposing unlawful discrimination within the education setting, including speaking out against sex discrimination). That is not the nature of Plaintiff's claim; nowhere in the TAC does he allege that he complained to anyone about sex discrimination, let alone that Defendant Gonzalez's letter was a response to such a complaint.

Plaintiff alleges that PCL's retaliation created a hostile environment, which in turn undermined his educational experience and professional opportunities. (TAC ¶¶ 257, 259.) The State Bar's failure to address this hostile environment allegedly violated its obligations under Title IX (TAC ¶ 258). His allegations come nowhere close to stating a claim of sexual harassment that is "so severe, pervasive, and objectively offensive that it can be said to deprive the

[5] The proposed amendment substitutes the State Bar of California for the individual State Bar Defendants. (*See* ECF 164 at 52.) The proposed change does not cure the TAC's deficiency, since there are no new allegations establishing affirmative conduct by the State Bar or any of its agents.

victims of access to . . . educational opportunities." *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. Of Educ.*, 526 U.S. 629, 633 (1999).

Plaintiff's Eighth Cause of Action should therefore be dismissed. Moreover, because Plaintiff has not been able to state anything close to a sex-discrimination claim in any of the five iterations of his complaint, the Court recommends that this claim be **dismissed without further leave to amend**.

E. The TAC Does Not Adequately Allege the State Bar Defendants' Liability under State Law

The State Bar Defendants move to dismiss the claims under state law. The Court agrees with the arguments made by in that Motion, and thus recommends dismissing the state-law claims against the State Bar and State Bar Defendants without leave to amend.

Plaintiff's Second Cause of Action alleges a violation of the Unruh Civil Rights Act. The Unruh Civil Rights Act requires a showing of discrimination by "a business establishment." Cal. Civ. Code § 51(b). The California Supreme Court has interpreted that term to apply to "entities operating as private businesses." *Brennon B. v. Super. Ct.*, 13 Cal. 5th 662, 679 (2022). Coverage under the law does not turn on the distinction between private and government control, but rather on the *function* that the entity performed when it allegedly discriminated—whether the entity is operating as the "functional equivalent of a commercial enterprise." *Id.* at 681. Here, Plaintiff alleges that two State Bar employees[6] discriminated in setting and enforcing policies. (TAC ¶¶ 167(b)-(c), 169.) In its role regulating law schools, at least, the State Bar does not operate as the functional equivalent of a business; instead, it exercises the power of the

[6] Plaintiff's proposed amendment would substitute the State Bar for its employees here. (ECF 164 at 29.) This Report and Recommendation therefore does not linger on the distinction between the employees and the entity under the Unruh Civil Rights Act.

State to regulate a profession within the State's borders. *See id.* at 682-83 (pointing with approval to caselaw stating that "government bodies do not function as 'business establishments' when they enact legislation"); *see also Insight Psych. & Addiction, Inc. v. City of Costa Mesa*, 724 F. Supp. 3d 1067, 1100 (C.D. Cal. 2024) (city not liable under Unruh Civil Rights Act for its zoning decisions, which are "quintessential functions of a municipal government"). The Second Cause of Action should be therefore **dismissed without leave to amend against the State Bar Defendants**.

Plaintiff's Fifth Cause of Action is for conspiracy. "Conspiracy" is not a stand-alone cause of action in California. *Entm't Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1228 (9th Cir. 1997). Instead, conspiracy can be used to expand the scope of tort liability to include those who did not directly commit the tort. *Jian Na Wu v. Or. Trail Corp.*, No. CV 19-4162-PSG (JPRx), 2019 WL 6603172, at *2 (C.D. Cal. July 31, 2019). To state a conspiracy claim, however, a plaintiff must sufficiently allege a wrongful underlying act. *See id.*

Here, Plaintiff's "conspiracy" claim is premised on a conspiracy to deny his civil rights, including his right to a fair education and career progression. (TAC ¶¶ 201-02, 206, 209.) But Plaintiff points to no statutory or common-law basis in California law to bring a tort claim premised on deprivation of either of the rights he identifies, nor any statute or constitutional provision that would provide a private right of action to sue to enforce those rights. Because it lacks the support of a viable legal theory, the Second Cause of Action should be **dismissed without leave to amend against all Defendants**.

Finally, Plaintiff's Sixth and Seventh Causes of Action both allege negligence: the Sixth Cause of Action alleges negligence by State Bar Defendants in fulfilling their duty to regulate, and the Seventh Cause of Act alleges negligence in hiring or supervision. As to the first, the State Bar and

State Bar Defendants are immune from liability for injury caused by "adopting or failing to adopt an enactment or by failing to enforce any law," Cal. Gov't Code §§ 818.2, 821, or by "the failure . . . to issue, deny, suspend or revoke any license . . . or similar authorization." Cal. Gov't Code §§ 818.4, 821.2. The Court does not perceive any allegation against the State Bar Defendants that would not fall in one of these two buckets. (*See* TAC ¶¶ 232-33 (outlining theory of negligence claim against State Bar employees).)

With respect to Plaintiff's Seventh Cause of Action, his claim is confusing, in that it names several State Bar Defendants individually—presumably to avoid the Eleventh Amendment bar against suing the State Bar itself—but then claims that the State Bar was negligent in hiring and supervising that same list of individuals. In any event, California law "does not recognize a general duty of care on the part of supervisors with respect to negligent hiring, retention, or training." *Est. of Osuna v. Cnty. of Stanislaus*, 392 F. Supp. 3d 1162, 1182 (E.D. Cal. 2019). Instead, as the California Supreme Court has explained, liability for administrators and supervisors for negligent hiring or retention "arises from the special relationship they had with plaintiff." *Cal. V. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 877 (2012); *accord Kendrick v. Cnty. of San Diego*, No. 15-cv-2615-GPC (AGS), 2018 WL 1316618, at *10 (S.D. Cal. Mar. 14, 2018) ("[A] plaintiff must allege a special relationship in order to bring a negligent hiring claim"); *Lindsay v. Fryson*, No. 2:10-cv-02842-LKK-KJN, 2012 WL 2683019, at *6 (E.D. Cal. July 6, 2012) (noting that *William S. Hart* "limited the viability of type of vicarious liability claim at issue . . . to situations where the supervisory or administrative personnel have a 'special relationship' with the plaintiff or class of plaintiffs"), *findings and recommendations adopted*, 2012 WL 3727157 (E.D. Cal. Aug. 27, 2012).

No special relationship exists between the State Bar and a law student who attends a school that the State Bar regulates. *Compare William S. Hart,* 53 Cal. 4th at 869 (internal quotation marks omitted) (finding special relationship between school district employees and pupils "arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel" which was "analogous in many ways to the relationship between parents and their children") *with Black v. City of San Diego*, No. 3:21-CV-1990-RBM-JLB, 2023 WL 2336894, at *13 (S.D. Cal. Mar. 2, 2023) (collecting cases finding no special relationship, such as would sustain a negligent hiring, training, or supervision claim, between law enforcement and individuals who state a claims against law enforcement officers).

Plaintiff's Sixth and Seventh Causes of Action should be **dismissed against State Bar Defendants without leave to amend**.

F. Plaintiff's Remaining State Law Claims Should Be Dismissed Without Prejudice

The PCL Defendants, including Spiro, moved primarily under Rule 8, only briefly touching on whether the claims should be dismissed under Rule 12(b)(6). To the extent not addressed above, then, the Court recommends that the state-law claims be dismissed without prejudice to Plaintiff re-alleging them against the PCL Defendants in an amended complaint. *See Wren v. Sletten Const. Co.*, 654 F.2d 529, 536 (9th Cir. 1981) ("When the state issues apparently predominate and all federal claims are dismissed before trial, the proper exercise of discretion requires dismissal of the state claim."); *Ismail v. Cnty. Of Orange*, 917 F. Supp. 2d 1060, 1072 (C.D. Cal. 2012) (noting that state-law claims "should" be dismissed if all the federal claims have been dismissed).

G. Plaintiff's Pending Motion to Amend the TAC Should Be Denied

The Court has reviewed Plaintiff's Motion to amend the TAC (ECF 163) and the proposed amended complaint (ECF 164) and recommends Plaintiff's motion for leave to amend be denied. Under Federal Rule of Civil Procedure 15(a)(1), a party may amend its pleading once as a matter of course within the period specified by the rule. Fed. R. Civ. P. 15(a)(1). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Leave to amend should be granted unless (1) doing so would prejudice the opposing party; (2) the amendment is sought in bad faith; (3) the amendment causes undue delay; or (4) the proposed amendment would be futile. *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).

For the reasons stated above, to the extent Plaintiff seeks leave to substitute the State Bar of California as a Defendant in any of his claims, Plaintiff's proposed amendment would be futile. "[A] proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9th Cir. 1997) (internal citation and quotation marks omitted). As to the State Bar, the Court has previously determined that it is entitled to Eleventh Amendment immunity to all claims except for those brought under Title IX. (*See* ECF 132 at 17-22.) And in any event, the proposed amended complaint does not allege the required discriminatory intent or include any factual allegations showing the State Bar took any affirmative conduct that would tend to establish its liability. The proposed amended complaint, therefore, fails to state a viable claim against the State Bar of California.

To the extent that Plaintiff seeks to substitute the Board of Directors of PCL, he may do so in his amended pleading—though doing so would not have saved the instant pleading from dismissal. That is, the proposed amended complaint does not include any additional allegations of discriminatory intent or that the Board violated the RICO statute. Likewise, none of the facts newly alleged in his proposed amended complaint would have saved the Third Amended Complaint from dismissal, but Plaintiff may add those new facts into an amended complaint, should the District Court accept this Court's recommendation that he be granted leave to amend as to a narrow sliver of claims.

Given the proposed amendment's failure to address the deficiencies identified above, the Court recommends that Plaintiff's Motion to amend the TAC be **denied**.

H. The Narrow Parameters of the Recommended Leave to Amend

The sum of the above recommendations, if they are accepted by the District Judge, would mean that no claim remains against the State Bar or any of its employees or associated entities; that is, all claims against the State Bar and its employees would be dismissed with prejudice and without further leave to amend. The Court thus recommends that all Defendants associated with the State Bar be dismissed from the case with prejudice.

With respect to the PCL Defendants,[7] the Court recommends granting leave to amend the Fourth Cause of Action, a claim under RICO, against the PCL Defendants only. The remaining federal claims should be dismissed with prejudice and without leave to amend as to all PCL Defendants and PCL itself.

[7] So that there can be no possible confusion, the Court intends to include Defendant Spiro plus all PCL-associated Defendants who moved in the Motions docketed at ECF 165 and 186 in the references to "PCL Defendants" in this Section.

Moreover, the Court recommends dismissing without prejudice Plaintiff's state-law claims against PCL itself and the PCL Defendants, with the exception of the claim for conspiracy, because there is no viable federal claim to serve as a basis for jurisdiction. Plaintiff may re-allege those state-law claims, if he chooses, in a Fourth Amended Complaint.

The leave to amend recommended here, however, is leave to fix existing causes of action left intact by this Report and Recommendation; it would not permit Plaintiff to add any new claim. *Benton v. Baker Hughes*, No. CV 12-07735 MMM (MRWx), 2013 WL 3353636, at *3 (C.D. Cal. June 30, 2013) (court may limit scope of leave to amend to fixing deficiencies identified in existing claims, not adding new claims). If Plaintiff wishes to add new claims or new Defendants, Plaintiff must file a request for leave to amend and explain why new claims or new Defendants should be added at this juncture.

RECOMMENDATION

IT THEREFORE IS RECOMMENDED that the District Judge issue an Order:

(1) accepting and adopting this Report and Recommendation;

(2) granting the State Bar Defendant's Request for judicial notice (ECF 173);

(3) granting in part Defendant Spiro's Request for judicial notice (ECF 192);

(4) granting in part Plaintiff's Requests for judicial notice (ECF 197, 202);

(5) granting in part Plaintiff's Motion to supplement the record (ECF 199);

(6) denying as moot Plaintiff's Motion for granting his previously filed request for judicial notice and supplemental of the record (ECF 210);

(7) denying Plaintiff's Motion to amend the Third Amended Complaint (ECF 163);

(8) granting the moving Defendant's Motions to Dismiss the Third Amended Complaint (ECF 154, 165, 172, 186) as follows:

(a) dismissing the Third Amended Complaint in its entirety;

(b) dismissing without leave to amend the First, Third, and Eighth Causes of Action for failure to state a claim;

(c) dismissing without leave to amend the Fourth Cause of Action as against the State Bar Defendants and with leave to amend as against the PCL Defendants (that is, the Defendants who moved for dismissal in Docket Nos. 154, 165, and 186);

(d) dismissing the Fifth Cause of Action without leave to amend against all Defendants

(e) dismissing the Second, Sixth, and Seventh Causes of Action against the State Bar Defendants without leave to amend;

(f) dismissing the Second, Sixth, and Seventh Causes of Action against the PCL Defendants (that is, the Defendants who moved for dismissal in Docket Nos. 154, 165, and 186) with leave to amend;

(9) dismissing with prejudice the following Defendants, all of whom are associated with the State Bar: the State Bar of California, Leah Wilson, Natalie Leonard, Brandon N. Stallings, Melanie M. Shelby, Ruben Duran, Hailyn Chen, Audrey Ching, Melanie M. Shelby, Arnold Sowell, Jr., Mark W. Toney, Paul A. Kramer, Jean Krasilnikoff, Ellin Davtyan, Louisa Ayrapetyan, George S. Cardona, Devan McFarland, and Enrique Zuniga;

(10) except to the extent just stated, denying the moving Defendants' Motions to Dismiss; and

(11) granting Plaintiff thirty days from the date of the District Judge's order accepting the Report and Recommendation in which to file a Fourth Amended Complaint fixing the deficiencies identified herein.

DATED: February 12, 2025

HON. BRIANNA FULLER MIRCHEFF
UNITED STATES MAGISTRATE JUDGE

NOTICE

Reports and Recommendations are not appealable to the United States Court of Appeals for the Ninth Circuit, but may be subject to the right of any party to file objections as provided in the Local Civil Rules for the United States District Court for the Central District of California and review by the United States District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until the District Court enters judgment.